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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

MAUREEN COLTON, Plaintiff and Respondent, v. JILLIAN KNUDSEN, Defendant and Appellant.	C074299 (Super. Ct. No. 39201200286040CUHRSTK)

Defendant Jillian Knudsen appeals from the trial court's order issuing a civil harassment restraining order against her. Both defendant and plaintiff Maureen Colton, neighbors sharing a private access road, obtained mutual restraining orders after a lengthy history of harassing one another and filing various legal actions against one another over use of the road.

On appeal, defendant contends (1) the trial court erred in considering the June 1, 2011, incident, raised during a previous restraining order application, as part of the alleged course of harassing conduct in violation of the doctrine of res judicata, and (2) the

trial court abused its discretion in issuing a restraining order under Code of Civil Procedure section 527.6 rather than applying "normal injunctive procedures."[1]

We affirm.[2]

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff's Request for a Restraining Order

On August 29, 2012, plaintiff filed a request for a civil harassment restraining order against defendant. In a supporting declaration, plaintiff declared that she and defendant use a shared road that plaintiff must use to access her home, which requires her to drive by defendant's property. She explained that in early 2011, defendant began harassing plaintiff and her family when they used the shared road. Plaintiff asserted that she made multiple reports to the San Joaquin County Sheriff's Office in response to defendant's ongoing harassment and threats. Among other things, she declared that on June 1, 2011, defendant drove her "7,500 pound tractor at [plaintiff] at a high rate of speed causing [plaintiff] to fear for [her] safety" (the June 2011 tractor incident). Plaintiff further stated that following this incident, she made a police report and requested a restraining order against defendant in June 2011, but the court denied her request and the harassment continued. She declared that since then, defendant continued the harassment by jumping out toward plaintiff's car in the dark, driving "a tractor or

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[1] Undesignated statutory references are to the Code of Civil Procedure in effect at the time of the relevant events.

[2] Plaintiff contends that because defendant failed to include the subject restraining order in her appendix, we should dismiss the appeal. While it is true that defendant failed to include the civil harassment restraining order after hearing form, she has since rectified this error by including it in her reply appendix. Additionally, she included the court's ruling with the factual findings on which the order is based in her original appendix. We believe it is better for the sake of finality and for the benefit of the parties to resolve this appeal on the merits.

'mule' " (defendant's all terrain vehicle)[3] toward plaintiff and her family at high speeds, screaming and yelling obscenities at plaintiff.

Plaintiff further declared that in January 2012, she was teaching her son, Jac, to drive on the access road when defendant's car suddenly appeared, accelerated to cut them off, and then suddenly slammed on the brakes in front of them. Plaintiff explained that at her direction, her son was able to stop short of hitting defendant's car, and defendant then "accelerated rapidly spinning her rear wheels and throwing rocks and gravel onto [plaintiff's] car." Similarly, plaintiff claimed that on July 30, 2012, her son was again driving when defendant suddenly jumped out in front of their car with one of her hands behind her back. At first, plaintiff feared that defendant had a gun in her hand, but defendant then pulled out a camera in a threatening manner. She declared that this type of harassment was ongoing for more than a year.

In a separate supporting declaration, plaintiff's husband, James Colton, declared that he witnessed defendant drive her tractor at full speed toward his wife in June 2011. Additionally, he alleged that he was returning home in his truck with his son when he saw defendant's car approach from behind at a high rate of speed. Mr. Colton thought the car was going to hit his truck because it was so close when it suddenly braked. He alleged that the vehicle repeatedly slowed down to create some distance behind him and then accelerated rapidly as if it was going to hit his truck. He declared that he and his son were both frightened for their safety.

In her opposition to the plaintiff's request for a restraining order in the instant case, defendant contended that plaintiff filed the request "for the sole purpose of harassment" and denied plaintiff's allegations. Defendant further alleged that the June 2011 tractor incident was raised in plaintiff's prior request for a restraining order, which

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[3] In the hearing testimony, defendant's all terrain vehicle (ATV) is interchangeably called a mule, a gator, an ATV, and a golf cart.

was denied on the merits. Defendant further contended that plaintiff's request in the instant case was facially deficient because the request provided only conclusory allegations without factual support and because there was insufficient evidence that plaintiff would suffer great or irreparable harm if the request were denied. Defendant also noted that she filed a civil suit against plaintiff and Mr. Colton (collectively, the Coltons) for an injunction, nuisance, harassment, intentional infliction of emotional distress, quiet title to easement, and declaratory relief in December 2011. Defendant alleged that this lawsuit covered issues raised in plaintiff's application in addition to other legal issues between the parties.

Defendant's Request for a Restraining Order

In September 2012, defendant filed a request for civil harassment restraining orders against the Coltons.[4] In support of her request, defendant attached a declaration alleging that the Coltons threatened defendant, her family, and her dogs with "physical injury and death." She alleged that due to ongoing disputes over the use of the access road, the Coltons constantly harassed defendant and her family by speeding by her property and maneuvering their cars toward her at high rates of speed. Additionally, she alleged that Mr. Colton brandished a shotgun from his front porch as defendant's husband, John Kamps, drove past the Coltons' residence. Finally, she alleged that the Coltons harassed workers on her property. She declared that this behavior was ongoing and caused her to fear for her own safety and for the safety of her family.

The Hearing on Consolidated Restraining Order Applications

The court held a hearing on the requests on November 16, 2012. However, due to witness unavailability, the second day of the hearing was put over to December 19, 2012,

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[4] The restraining order against plaintiff is not challenged on appeal and accordingly, we do not discuss it in detail.

and it appears this hearing date was reset for February 11, 2013.[5] On December 10, 2012, the court consolidated plaintiff's request for a restraining order against defendant with defendant's requests for restraining orders against plaintiff and Mr. Colton in accordance with a stipulation between the parties.

Plaintiff's Evidence

During the hearing, plaintiff testified about defendant's course of conduct over an approximate two-year period. Plaintiff testified that her home is the fifth house down from the highway on the access road, and she must drive past defendant's property to get to her property. Defendant moved into her home in 2010, and by early 2011, the neighbors began arguing over the use of the access road. Plaintiff testified that in May 2011, she observed defendant dump six loads of dirt on the road, and when plaintiff asked her about it, defendant began "yelling and cursing" and said she did not want people driving past her driveway. She testified that during the argument, defendant began "swinging her arms around" and approached plaintiff's car.

Plaintiff testified that approximately a week after the June 2011 tractor incident, the Coltons were returning home and saw additional mounds of dirt on the access road, blocking their way home. In total, there were nine dirt mounds, each approximately two feet high, across the road. In order to get home, the Coltons had to go around the road and drive over another neighbor's irrigation berm. Plaintiff testified that they called the sheriff's office when they got home to have the roadblocks removed. She testified that the sheriff's office instructed them to "wait where the problem was," and Mr. Colton went back to the area where defendant placed the dirt mounds. Plaintiff later drove there

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[5] Defendant, electing to proceed with an appendix in lieu of a clerk's transcript, did not provide court orders or any other documentation between the dates of December 10, 2012, and May 9, 2013. However, according to the reporter's transcript, the second day of the hearing was February 11, 2013, and the third day of the hearing was April 25, 2013.

in her car to give Mr. Colton his cell phone, and she parked her vehicle on the other neighbor's property. Plaintiff testified that at that point, Kamps approached the Coltons and warned them not to upset defendant and informed them that he was going to put a gate on the road with an access code, which he would control.

Plaintiff further testified that after the Coltons, Kamps, and two other neighbors had gathered to discuss the road for approximately 15 minutes, defendant approached on her tractor, yelling and screaming. Plaintiff then had to move her car because other neighbors were trying to drive around the dirt mounds to get home. Plaintiff testified that as she backed up her car, defendant approached quickly on the tractor directly toward her, screaming. Plaintiff testified she could not move her car because her neighbor's car was passing her, and defendant continued to direct her tractor toward plaintiff. She testified that defendant's tractor came within 10 feet of her car before Kamps intervened and told his wife to stop. Plaintiff then drove home.

Additionally, plaintiff testified that several days after this incident, plaintiff was returning home when defendant suddenly jumped out at her from behind some trees and pointed a camera at her, coming within a foot of her car. She testified that she was startled by defendant and nearly hit a tree as a result. She testified that this incident occurred after she had served the first request for a restraining order on defendant. Plaintiff testified that defendant repeated this behavior at least twice a week, often at night where she would use the flash on her camera and startle plaintiff and her family.

Plaintiff testified that in January 2012, she was again heading home on the access road, with her son driving, when defendant's car appeared on the left side and swerved in very close to plaintiff's car. Plaintiff testified that defendant then sped past her car, pulled in front, and suddenly slammed on the brakes. She testified that the cars came very close to colliding and her son, a new driver, was visibly shaken. She testified that between January 2012 and July 2012, there were several other times where defendant jumped out at her car as she drove past defendant's home. Plaintiff testified that around

the end of July, she was again a passenger in her car while her son was driving when defendant suddenly ran out in front of their car and shoved her camera "right in" the car window in a threatening manner. Similarly, she testified that on September 25, 2012, plaintiff was in her car, with her son driving, when defendant approached plaintiff's car on her tractor. She testified that the following day, defendant again jumped out at plaintiff's car with a camera.

Plaintiff testified that as a result of the ongoing harassment, she suffered loss of sleep and physical symptoms including hives and hair loss. Additionally, she testified that she limited her trips away from home because of the altercations with defendant every time she used the access road.

Sandy Filice, plaintiff's friend, testified that in August 2011, she was riding in plaintiff's car on the access road with plaintiff, plaintiff's son, and her own children when the hatch on plaintiff's car "flung open." She testified that plaintiff stopped the car on the road in front of defendant's home so that plaintiff's son could get out and close the door. Filice testified that while he was doing so, defendant's dog approached him aggressively like the dog was going to bite him. She then saw defendant approach quickly on her ATV. She testified that defendant was yelling, waving her hands, and taking photographs of plaintiff's car. Filice explained that she felt threatened and visited plaintiff less frequently after the incident because she didn't want to be harassed by defendant.

Jac also testified. His testimony about the August 2011 incident was similar to Filice's testimony. Specifically, he testified that he got out of plaintiff's car to close the hatch and defendant's dog "came charging at" him. He testified that defendant then approached on her ATV and made a motion like she was pulling out a gun. He testified that defendant pulled out a camera and pointed it right at him while yelling at him. He also testified that in January 2012, he was driving, but stopped so his mother could retrieve their mail, and defendant passed quickly in her vehicle, nearly hitting the driver's side of plaintiff's car. As they proceeded onto the access road, defendant "deliberately

stopped in front" of the car. He also testified that he experienced a similar incident with defendant when he was a passenger with his father driving in July 2012. He testified that during that incident, defendant pulled up close behind them in her vehicle and then repeatedly approached quickly as if she was going to hit them and then backed off. He testified that approximately one week later, he was driving with plaintiff in the car, and defendant came out from behind some trees in her ATV and aimed her camera at them. After they passed defendant, she followed in her ATV and "almost rammed [plaintiff's car] a few times." Finally, he testified that on December 7, 2012, while he was driving on the access road alone, defendant approached him head on in her car and accelerated toward him in his lane, coming within three or four inches of his truck.

Mr. Colton testified that when defendant first put the mounds of dirt on the access road to serve as speed bumps, it was difficult for him to get his pickup truck over them because they were soft. Regarding defendant's allegation that Mr. Colton brandished a weapon, he testified that in June 2011, he was using a shotgun to shoot rodents on his property. He denied threatening defendant or Kamps with the shotgun. He also testified that he witnessed defendant drive her tractor aggressively toward his wife on June 1, 2011.

Defendant's Evidence

Defendant described a very different version of events. She testified that she installed speed bumps (the mounds of dirt) on the access road in front of her property to curb excessive speeding. The Coltons immediately objected. She testified that plaintiff threatened her and her children and deliberately drove excessive speeds through her property. She claimed that Mr. Colton stalked her and spun the tires on his car when he drove by her house, causing rocks to spin off the tires at defendant's children.

Defendant generally denied the Coltons' allegations. Regarding the June 2011 tractor incident, defendant testified that she approached plaintiff on her tractor only after plaintiff pulled her car into defendant's orchard because defendant was concerned about

the trees. She claimed that her tractor never came any closer to plaintiff's car than about 81 feet. She testified that during the August 2011 incident, plaintiff stopped her car in front of defendant's home and Jac got out of the car to "create a confrontation with [her] dog." She testified that neither she nor her dog were aggressive during this encounter.

Kamps also testified at the hearing. He testified that at one point in 2011, he rode his bike past the Coltons' home and Mr. Colton told him, " 'you've been warned.' " Kamps testified that Mr. Colton then yelled to his son to let the dogs out of their kennel, and the Coltons' dogs chased Kamps. Regarding the June 2011 tractor incident, he testified that defendant was working on her tractor when the Coltons gathered near defendant's property with another neighbor to discuss the speed bumps. He testified that his wife yelled from her tractor to the Coltons, directing them to stay off of her property and away from her children. Kamps testified that Mr. Colton then yelled back, " 'I don't give a damn about your kids.' " He testified that plaintiff then backed her car into the Kamps' orchard to make way for another car to pass, and defendant then drove her tractor toward plaintiff's car but only came within about 85 feet of plaintiff. He testified that Mr. Colton then told defendant, " 'I got you now.' " When cross-examined about his prior statements in the sheriff's report that his wife had a "very hot temper" and he screamed at her to stop when she was driving her tractor toward plaintiff, Kamps denied making these statements to the responding sheriff's deputy. He claimed that he merely told everyone to stop yelling at each other.

Kamps further testified that a few weeks later, on Father's Day in June 2011, he was driving his car on the access road past the Coltons' home and saw Mr. Colton in his carport holding a shotgun. He claimed that Mr. Colton approached him with the gun and pointed it at Kamps's car. Kamps testified that he was concerned for his safety as a result of this incident.

The Trial Court's Ruling

After hearing testimony over the course of three days and reviewing the parties' closing briefs, the trial court issued a written ruling granting mutual restraining orders. Regarding plaintiff's restraining order against defendant, the court found that defendant repeatedly made credible threats of violence with her motor vehicle and engaged in "a course of conduct that that would place a reasonable person in fear for his or her safety." The court further found that plaintiff demonstrated that she had "suffered substantial emotional distress as a result of [defendant]'s actions." The court found, "Because [defendant]'s conduct has continued well past the date of the June 28, 2011 hearing on a previous application, the court finds by clear and convincing evidence that harassment had been shown and that great or irreparable harm would result to [plaintiff] if an injunction is not issued because of the reasonable probability that unlawful violence will occur in the future."

In accordance with the court's ruling, on June 6, 2013, the court issued three injunctions, each for a duration of three years, as follows: two civil harassment restraining orders to protect defendant and her family from harassment by plaintiff and Mr. Colton, respectively, and one civil harassment restraining order to protect plaintiff and her family from harassment by defendant. Each order instructed the restrained persons to stay at least 10 yards away from the protected persons and their vehicles, and the orders further instructed the restrained persons to cease harassing and contacting the protected persons.

DISCUSSION

I. Section 527.6 and the Standard of Review

Section 527.6, subdivision (a)(1), provides for injunctive relief from harassment as follows: "A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section." Section 527.6, subdivision (b)(3), provides: " 'Harassment' is unlawful

violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner." "The elements of unlawful harassment, as defined by the language in section 527.6, are as follows: (1) 'a knowing and willful course of conduct' entailing a 'pattern' of 'a series of acts over a period of time, however short, evidencing a continuity of purpose'; (2) 'directed at a specific person'; (3) 'which seriously alarms, annoys, or harasses the person'; (4) 'which serves no legitimate purpose'; (5) which 'would cause a reasonable person to suffer substantial emotional distress' and 'actually cause[s] substantial emotional distress to the plaintiff'; and (6) which is not a '[c]onstitutionally protected activity.' " (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.)

A course of conduct is defined as "*a pattern of conduct* composed of *a series of acts* over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or computer email. Constitutionally protected activity is not included within the meaning of 'course of conduct.' " (§ 527.6, subd. (b)(1), italics added.) An injunction restraining harassing conduct in the future is authorized under section 527.6 only when it appears from the evidence that the harassment is likely to recur in the future. (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 189 (*R.D.*).)

On review of the trial court's issuance of a civil harassment restraining order, we examine whether the express and implied factual findings that support the trial court's order are justified by substantial evidence in the record. (*Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137-1138.) "Under the substantial evidence standard of review, '*we*

must consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.] [¶] It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment.' " (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266, first italics added.) However, where the trial court made conclusions of law in the issuance of a restraining order, "we review those conclusions of law de novo." (*Westfour Corp. v. California First Bank* (1992) 3 Cal.App.4th 1554, 1558.)

II. Res Judicata

A. Additional Background and Defendant's Contentions

On June 3, 2011, plaintiff filed a request for a civil harassment restraining order in connection with the June 2011 tractor incident, alleging that defendant "went after" her with a tractor. Plaintiff also sought protection for her husband and son. The court immediately granted a temporary restraining order and scheduled a hearing on the request for a more long-term restraining order. On June 23, 2011, defendant opposed the request, attaching a declaration regarding the ongoing disputes between defendant and plaintiff. In particular, defendant declared that plaintiff drove her vehicle into defendant's orchard and spun her tires. Defendant denied maneuvering her tractor toward plaintiff in a threatening manner. On June 28, 2011, the trial court held a hearing on the request for a restraining order and issued a minute order denying the request and dissolving the temporary restraining order in effect up to the hearing. However, the court did not make factual findings in the order or provide any explanation for its decision.

During the hearing in the instant case, defendant requested that the trial court take judicial notice of the minute order on plaintiff's prior request for a restraining order, contending that under the doctrine of res judicata, plaintiff could not present evidence on

the June 2011 tractor incident because that evidence was reviewed in the previous hearing and her request was denied. The court took judicial notice of the minute order but ruled that plaintiff's proposed evidence regarding the June 2011 tractor incident was relevant to establish defendant's continuing course of conduct. The court reasoned, "I think I mentioned that to counsel last time that maybe what happened up to a certain point didn't rise to that level, but if it continued and things arising out of there did cause extreme mental distress or . . . rise to violence, then I think that is relevant." The court further reasoned, "I think it's appropriate to hear that evidence over again because I have to judge credibility on the weight of the evidence based on what I hear in the proceeding." The court referenced this ruling again in its order issuing mutual restraining orders, noting that while it denied plaintiff's 2011 request for a restraining order, "[n]ow the court has heard additional evidence of *continuing* and escalating conduct involving motor vehicles being driven in a manner that will cause great bodily injury if the court takes no action to control the parties' conduct." (Italics added.)

On appeal, defendant contends that the trial court erred in considering evidence on the June 2011 tractor incident in violation of the doctrine of res judicata because the court heard that evidence in June 2011 and denied plaintiff's request at that time. Thus, according to defendant, plaintiff was barred from raising this incident again in the instant request for a restraining order. We disagree.

B. Analysis

"[T]he doctrine of res judicata precludes parties or their privities from relitigating a cause of action that has been finally determined by a court of competent jurisdiction." (*Gamble v. General Foods Corp.* (1991) 229 Cal.App.3d 893, 898.) The doctrine is only applicable where the prior proceeding resulted in a final judgment on the merits. (*Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 556.) The purpose of the doctrine is to " 'curtail multiple litigation causing vexation and expense to the *parties* and wasted effort and expense in *judicial administration*.' " (*Huntingdon Life*

Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc. (2005) 129 Cal.App.4th 1228, 1247, quoting 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 290, p. 820.) There are five elements to res judicata: "First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 (*Lucido*).)

We conclude that defendant has failed to demonstrate that res judicata barred the court from considering the June 2011 tractor incident. Plaintiff initially filed a request for a restraining order against defendant on June 3, 2011, alleging that defendant went after her with a tractor. After a hearing later that month, the court declined to issue a restraining order. Defendant contends there was a decision on the merits in the prior proceeding and the decision was not based on any procedural defect. The court's minute order does not indicate that it made any findings on any issues; it merely stated, "The Court denies Petitioner's request for a Temporary Restraining Order." However, as defendant points out, at the hearing on the instant matter, the trial court indicated its ruling had been on the merits. When plaintiff was asked during her testimony at the hearing on the instant case, "What is it about the June 1st, 2011 incident that caused you to fear seeing [defendant] on a tractor?" defendant objected on relevance grounds since the restraining order had been denied. The objection was overruled by the trial court. In explaining its ruling allowing the testimony, the judge indicated that he had presided over the previous hearing. He then said, "I heard it *on the merits*. As I say, I heard all the evidence there, and at the end of it I found that the burden of proof wasn't satisfied to issue a restraining order." But the trial court then went on to explain, "However, the restraining order can be based on a course of conduct. So I think that facts that were

heard at that time, if they are part of the course of conduct, which is now different than it was a year and a half ago, I think that's fair game."

Defendant admits in her briefing that "[c]ourts may revisit and consider the facts upon which a prior 527.6 application was granted." (See also *R.D., supra*, 202 Cal.App.4th at pp. 189-190.) Yet defendant contends that courts may *not* revisit and consider facts upon which a prior application was denied. We disagree.

When the doctrine of res judicata is applicable, it precludes relitigation of any issue decided on the merits regardless of the result in the prior litigation. (See *Lucido, supra*, 51 Cal.3d at p. 341.) In *R.D.*, the court reasoned: "[I]n evaluating the likelihood that the harassment will continue the court was not limited to events that occurred after the first restraining order was entered. The lapse of the first harassment restraining order did not erase the facts on which the order was based, and did not preclude the court from considering the existence of those facts in evaluating the need for a new order. Nor was the court restricted as to the nature of the evidence from which it could draw an inference of a likelihood that the harassment would resume; the court could consider any evidence showing a likelihood of future harassment, including evidence of conduct that might not itself constitute harassment. [Citation.] Behavior that may not alone constitute an intentionally harassing course of conduct logically still might show an intention to resume or continue an already established course of harassing conduct." (*R.D., supra*, 202 Cal.App.4th at pp. 189-190.) Even though the doctrine of res judicata was not mentioned in *R.D.*, given the court's underlying reasoning, we see no reason to distinguish that case or to hold that events considered in a prior hearing are permitted if injunctive relief was granted in that hearing but precluded if relief was denied.

Moreover, in our view, at least two required elements of res judicata are missing here: (1) the issue sought to be precluded from relitigation here is *not* identical to that decided in a former proceeding, and (2) thus the issue to be decided here was *not decided* in the former proceeding. This is because the issue in the current proceeding involved an

alleged pattern of conduct that did not exist during the first proceeding. The pattern of conduct in the first proceeding involved a single event; the pattern of conduct at issue here involved that event plus additional acts that took place after the first proceeding. In other words, the issue before the court during the first proceeding was whether the June 2011 tractor incident met the course of conduct requirement of section 527.6; the issue before the court in the instant case was whether the June 2011 tractor incident and all of the other subsequent incidents constituted a course of conduct and thereby satisfied the requirements for section 527.6. (See *Leydon v. Alexander* (1989) 212 Cal.App.3d 1, 4-5 [a single act is insufficient to establish harassment; an ongoing course of conduct is required].) This view is consistent with the trial court's factual finding in the instant case that the June 2011 tractor incident "may have been, at the time, an *isolated incident* threatening violence" (italics added); however, there was credible evidence describing subsequent aggressive activity by defendant after that incident.

Indeed, in a different context, it has been recognized that "[r]es judicata was never intended to be used as a vehicle for forever 'immunizing' any party in a continuing business relationship from liability for continuous or recurrent breaches of contract, conspiracy directed toward such breaches, *or for continuous or recurrent tortious misconduct*." (*Nakash v. Superior Court* (1987) 196 Cal.App.3d 59, 69, italics added.) In *Nakash*, the court concluded that res judicata did not bar state court litigation after an earlier settlement in federal court involving ongoing fiduciary and business duties, including the covenant of fair dealing and the duty to refrain from conduct which would deprive any party to a contract from obtaining its benefits. (*Id*. at pp. 67-69.) The *Nakash* court reasoned, "[i]f res judicata may be used to bar future inquiry into such misconduct, no party engaged in a business and fiduciary relationship in this state would attempt settlement negotiations concerning business differences because of the risk of giving too much future leverage to the other side of the dispute." (*Id*. at p. 69.) In the present context, a policy consideration concerning the risk of litigation is also at play. If

the res judicata doctrine was applied to conduct involving prior section 527.6 petitions, parties would have to gamble whether that conduct is enough to establish the elements or postpone seeking restraining orders until the defendant engaged in additional conduct. One of the purposes of section 527.6—the prevention of future injury—might be effectively frustrated, because the next act might be one where the defendant actually inflicts injury. (See *Russell v. Douvan* (2003) 112 Cal.App.4th 399, 403 (*Russell*) [§ 527.6 injunctions serve to prevent future injury and an injunction is authorized when wrongful acts are likely to recur].)

Finally, even if we were to conclude that the trial court erred in not precluding testimony on the June 2011 tractor incident, any error was harmless under *People v. Watson* (1956) 46 Cal.2d 818, 836. The *Watson* test for harmless error focuses not on what a reasonable trier of fact " '*could* do,' " but what such a trier of fact " 'is *likely* to have done' " in the absence of the error under consideration. (*People v. Beltran* (2013) 56 Cal.4th 935, 956.) In making that evaluation, we may consider whether the evidence supporting the existing judgment is so relatively strong, and the evidence supporting a different outcome is so comparatively weak, that there is no reasonable probability the error of which the defendant complains affected the result. (*Ibid*.)

It is not reasonably probable defendant would have obtained a more favorable result had the trial court precluded the evidence of the 2011 tractor incident. As the trial court noted, at the time of plaintiff's first request for a restraining order, defendant's harassing activities were apparently limited to one isolated incident. Her conduct subsequently became more aggressive and more frequent. The court explained its concern about this course of conduct in its factual findings, pointing out that while the evidence at the prior hearing "did not establish that great or irreparable harm would result if an injunction were not issued," "[n]ow the court has heard additional evidence of continuing and escalating conduct involving motor vehicles being driven in a manner that will cause great bodily injury if the court takes no action to control the parties' conduct."

It was defendant's increasingly aggressive conduct, which took place over the course of more than a year following the first hearing that prompted plaintiff to again seek injunctive relief under section 527.6. The trial court found that there was credible evidence of those subsequent incidents, including a near side-swipe of plaintiff's car while her teenage son was at the wheel. Under these circumstances, we cannot say that it is reasonably probable that defendant would have obtained a better result if the evidence of the June 2011 tractor incident was excluded.

III. Likelihood of Future Harassment

A. Defendant's Contentions

Defendant argues that there was insufficient evidence of a threat of a continued course of harassing conduct to warrant an injunction against future harassment and for this reason, the case was inappropriately decided under "a streamlined procedure" of section 527.6 with "loose evidentiary rules." Specifically, she argues that because ten months "passed by without incident" between the plaintiff filing the application in August 2012 and the court issuing the restraining order in May 2013, there was no likelihood of future harassment.[6] She argues that "[t]he immediacy that is contemplated under section 527.6 should not be broadly construed so as to deprive a party of a regular trial proceeding." Thus, according to defendant, the trial court erred in issuing the restraining order against her because plaintiff's action did not "fall within the spirit or letter of section 527.6." Assuming this argument is not forfeited for failure to raise it in the trial court, we reject it as meritless.

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[6] Defendant complains that "it took 10 months from the filing of the application for restraining order to the entry of the order itself." However, defendant never objected to the continuances. In fact, defendant's counsel agreed to two of these continuances on the record.

B. Analysis

The purpose of an injunction under section 527.6 is not to punish for past acts of harassment, but rather to provide quick relief to victims of harassment and prevent future harassing conduct. (*Russell, supra*, 112 Cal.App.4th at p. 403.) Accordingly, to obtain relief, a plaintiff must establish "the reasonable probability the acts will be repeated in the future." (*Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 332.) In evaluating the likelihood that the harassment will recur in the future, the court may consider the totality of the circumstances, "including evidence of conduct that might not itself constitute harassment." (*R.D., supra*, 202 Cal.App.4th at pp. 189-190.)

Here, the evidence plainly showed and the trial court expressly found that defendant's behavior was likely to continue in the absence of an injunction. There was evidence that defendant immediately resumed her harassment of plaintiff when the first request for a restraining order was denied: Filice testified that in August 2011, after plaintiff stopped her car on the access road to allow her son to close the car's hatch, defendant approached quickly after defendant's dog began acting aggressively. Defendant was yelling, waving her hands, and taking photographs of plaintiff's car. Further, there was testimony that defendant continued harassing plaintiff and her family after plaintiff filed her second request for a restraining order in August 2012: plaintiff testified that on September 25, 2012, she was in her car, with her son driving, when defendant approached them on her tractor. She also testified that the following day, defendant jumped out at plaintiff's car with a camera. While these incidents might not constitute harassment alone, they were properly considered as part of the alleged course of conduct. (See *R.D., supra*, 202 Cal.App.4th at pp. 189-190.) Most disturbingly, Jac testified that on December 7, 2012, he was driving on the access when defendant approached him head on in her car and accelerated toward him in his lane, coming within three or four inches of his truck. Accordingly, there was substantial evidence that the

harassing conduct was ongoing during the ten months between the request for relief and the restraining order's issuance.

While a trial court is not required to make an explicit finding of continuing risk of harassing misconduct (see *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1112), the trial court below plainly stated there was such a risk of future harm. When pronouncing its ruling on the motion, the court referenced the ongoing pattern of harassing conduct, and the court then explicitly decided based on the evidence presented that "great or irreparable harm would result to [plaintiff] if an injunction is not issued because of the reasonable probability that unlawful violence will occur in the future." The court emphasized that the conduct was escalating, "involving motor vehicles being driven in a manner that will cause great bodily injury if the court takes no action to control the parties' conduct." We agree with the trial court that, under the totality of the circumstances, it was reasonably likely that harassment would recur in the future at the time the court issued the mutual restraining orders.

DISPOSITION

The judgment is affirmed. Defendant shall pay plaintiff's costs on appeal. (See Cal. Rules of Court, rule 8.278(a)(1) & (5).)

s/MURRAY, J.

We concur:

s/HULL, Acting P. J.

s/HOCH, J.